

## **Senate Bill No. 1824**

### **CHAPTER 730**

An act to amend Section 25404.3 of, and to add Sections 25404.3.1 and 25404.8 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 25, 2000. Filed  
with Secretary of State September 27, 2000.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 1824, Kelley. Certified unified program agencies: counties.

(1) Existing law requires the Secretary for Environmental Protection to adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program. A city or local agency that meets specified requirements is authorized to apply to the secretary to implement the unified program, and every county is required to apply to the secretary to be certified to implement the unified program. Each certified unified program agency (CUPA) is required to institute a single fee system to fund the implementation of the unified fee system. Existing law requires the secretary, if no local agency has been certified in a county by January 1, 2000, to determine the methods by which the unified program shall be implemented and to select any combination of specified implementation methods.

This bill would require a city or other local agency that is implementing the provisions regulating the handling of hazardous materials or the storage of hazardous substances in underground storage tanks, and that wishes to administer the unified program, to request the secretary to include the agency in that implementation structure.

The bill would, as of July 1, 2001, establish the Rural CUPA Reimbursement Account in the General Fund and would authorize the secretary to expend the money in the account to make specified allocations to a county that implements the unified program pursuant to one of those methods. The bill would require such a county to set the fees under the single fee system so that the fee amounts collected and the amount allocated by the secretary are sufficient to pay the necessary costs incurred by the county in implementing the unified program.

The bill would impose a state-mandated local program by imposing new duties upon counties with regard to the implementation of the unified program.

The bill would require the agency, by February 15, 2001, to submit a report to the Legislature recommending a funding source for

unified program agencies that are implementing the unified program but have a limited number of entities regulated under the unified program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 25404.3 of the Health and Safety Code, as amended by Chapter 144 of the Statutes of 2000, is amended to read:

25404.3. (a) The secretary shall, within a reasonable time after submission of a complete application for certification pursuant to Section 25404.2, and regulations adopted pursuant to that section, but not to exceed 180 days, review the application, and, after holding a public hearing, determine if the application should be approved. Before disapproving an application for certification, the secretary shall submit to the applicant agency a notification of the secretary's intent to disapprove the application, in which the secretary shall specify the reasons why the applicant agency does not have the capability or the resources to fully implement and enforce the unified program in a manner that is consistent with the regulations implementing the unified program adopted by the secretary pursuant to this chapter. The secretary shall provide the applicant agency with a reasonable time to respond to the reasons specified in the notification and to correct deficiencies in its application. The applicant agency may request a second public hearing, at which the secretary shall hear the applicant agency's response to the reasons specified in the notification.

(b) In determining whether an applicant agency should be certified, or designated as certified, the secretary, after receiving comments from the director, the Director of the Office of Emergency Services, the State Fire Marshal, and the Executive Officers and Chairpersons of the State Water Resources Control Board and the California regional water quality control boards, shall consider at least all of the following factors:

(1) Adequacy of the technical expertise possessed by each unified program agency that will be implementing each element of the unified program, including, but not limited to, whether the agency responsible for implementing and enforcing the requirements of Chapter 6.5 (commencing with Section 25100) satisfies the requirements of Section 15260 of Title 27 of the California Code of Regulations.

(2) Adequacy of staff resources.



(3) Adequacy of budget resources and funding mechanisms.

(4) Training requirements.

(5) Past performance in implementing and enforcing requirements related to the handling of hazardous materials and hazardous waste.

(6) Recordkeeping and cost accounting systems.

(7) Compliance with the criteria in Section 15170 of Title 27 of the California Code of Regulations.

(c) (1) In making the determination of whether or not to certify a particular applicant agency as a certified unified program agency, the secretary shall consider the applications of every other applicant agency applying to be a certified unified program agency within the same county, in order to determine the impact of each certification decision on the county. If the secretary identifies that there may be adverse impacts on the county if any particular agency in a county is certified, the secretary shall work cooperatively with each affected agency to address the secretary's concerns.

(2) The secretary shall not certify an agency to be a certified unified program agency unless the secretary finds both of the following:

(A) The unified program will be implemented in a coordinated and consistent manner throughout the entire county in which the applicant agency is located.

(B) The administration of the unified program throughout the entire county in which the applicant agency is located will be less fragmented between jurisdictions, as compared to before January 1, 1994, with regard to the administration of the provisions specified in subdivision (c) of Section 25404.

(d) (1) The secretary shall not certify an applicant agency that proposes to allow participating agencies to implement certain elements of the unified program unless the secretary makes all of the following findings:

(A) The applicant agency has adequate authority, and has in place adequate systems, protocols, and agreements, to ensure that the actions of the other agencies proposed to implement certain elements of the unified program are fully coordinated and consistent with each other and with those of the applicant agency, and to ensure full compliance with the regulations implementing the unified program adopted by the secretary pursuant to this chapter.

(B) An agreement between the applicant and other agencies proposed to implement any elements of the unified program contains procedures for removing any agencies proposed and engaged to implement any element of the unified program. The procedures in the agreement shall include, at a minimum, provisions for providing notice, stating causes, taking public comment, making appeals, and resolving disputes.



(C) The other agencies proposed to implement certain elements of the unified program have the capability and resources to implement those elements, taking into account the factors designated in subdivision (b).

(D) If any of the other agencies proposed to implement certain elements of the unified program are not directly responsible to the same governing body as the applicant agency, the applicant agency maintains an agreement with any agency that ensures that the requirements of Section 25404.2 will be fully implemented.

(E) If the applicant agency proposes that any agency other than itself will be responsible for implementing aspects of the single fee system imposed pursuant to Section 25404.5, the applicant agency maintains an agreement with that agency that ensures that the fee system is implemented in a fully consistent and coordinated manner, and that ensures that each participating agency receives the amount that it determines to constitute its necessary and reasonable costs of implementing the element or elements of the unified program that it is responsible for implementing.

(2) After the secretary has certified an applicant agency pursuant to this subdivision, that agency shall obtain the approval of the secretary before removing and replacing a participating agency that is implementing an element of the unified program.

(3) Any state agency, including, but not limited to, the State Department of Health Services, acting as a participating agency, may contract with a unified program agency to implement or enforce the unified program.

(e) Until a city's or county's application for certification to implement the unified program is acted upon by the secretary, the roles, responsibilities, and authority for implementing the programs identified in subdivision (c) of Section 25404 that existed in that city or county pursuant to statutory authorization as of December 31, 1993, shall remain in effect.

(f) (1) Except as provided in subparagraph (C) of paragraph (2) or in Section 25404.8, if no local agency has been certified by January 1, 1997, to implement the unified program within a city, the secretary shall designate either the county in which the city is located or another agency pursuant to subparagraph (A) of paragraph (2) as the unified program agency.

(2) (A) Except as provided in subparagraph (C), if no local agency has been certified by January 1, 2001, to implement the unified program within the unincorporated or an incorporated area of a county, the secretary shall determine how the unified program shall be implemented in the unincorporated area of the county, and in any city in which there is no agency certified to implement the unified program. In such an instance, the secretary shall work in consultation with the county and cities to determine which state or local agency or combination of state and local agencies should



implement the unified program, and shall determine which state or local agency shall be designated as the certified unified program agency.

(B) The secretary shall determine the method by which the unified program shall be implemented throughout the county and may select any combination of the following implementation methods:

(i) The certification of a state or local agency as a certified unified program agency.

(ii) The certification of an agency from another county as the certified unified program agency.

(iii) The certification of a joint powers agency as the certified unified program agency.

(C) Notwithstanding paragraph (1) and subparagraphs (A) and (B), if the Cities of Sunnyvale, Anaheim, and Santa Ana prevail in litigation filed in 1997 against the secretary, and, to the extent the secretary determines that these three cities meet the requirements for certification, the secretary may certify these cities as certified unified program agencies.

(g) (1) If a certified unified program agency wishes to withdraw from its obligations to implement the unified program and is a city or a joint powers agency implementing the unified program within a city, the agency may withdraw after providing 180 days' notice to the secretary and to the county within which the city is located, or to the joint powers agency with which the county has an agreement to implement the unified program.

(2) Whenever a certified unified program agency withdraws from its obligations to implement the unified program, or the secretary withdraws an agency's certification pursuant to Section 25404.4, the successor certified unified program agency shall be determined in accordance with subdivision (f).

SEC. 2. Section 25404.3.1 is added to the Health and Safety Code, to read:

25404.3.1. A city or other local agency, which, as of December 31, 1999, has been designated as an administering agency pursuant to Section 25502, or has assumed responsibility for the implementation of Chapter 6.7 (commencing with Section 25280) pursuant to Section 25283, and that wishes to administer the unified program or an element of the unified program identified in subdivision (c) of Section 25404, shall request the secretary to include the agency in the implementation structure established by paragraph (2) of subdivision (f) of Section 25404.3. The secretary may grant the request for as long as the agency remains qualified to implement the unified program or an element of the program.

SEC. 3. Section 25404.8 is added to the Health and Safety Code, to read:

25404.8. (a) In a county for which a CUPA has not been certified on or before January 1, 2000, and where the unified program is implemented pursuant to paragraph (2) of subdivision (f) of Section 25404.3, the CUPA is eligible for an allocation pursuant to subdivision (d). The CUPA shall institute a single fee system that meets the requirements of Section 25404.5, except that the amounts to be paid by each person regulated by the unified program under the single fee system shall be set at a level so that the revenues collected under the single fee system and the amount allocated pursuant to subdivision (d) are sufficient to pay the necessary costs incurred by the CUPA in implementing the unified program. The CUPA shall determine the level to be paid by persons regulated under the unified program by conducting a workload analysis that establishes the direct and indirect costs to the CUPA of implementing the unified program.

(b) A CUPA that implements the unified program pursuant to paragraph (2) of subdivision (f) of Section 25404.3 shall use the funding allocated pursuant to subdivision (d) to implement the unified program within the jurisdiction of the CUPA in accordance with the implementation agreement reached with the secretary pursuant to paragraph (2) of subdivision (f) of Section 25404.3.

(c) The Rural CUPA Reimbursement Account is hereby established in the General Fund and the secretary may expend the money in the account to make the allocations specified in subdivision (d).

(d) (1) Except as provided in paragraph (2), the secretary shall allocate the following amounts from the Rural CUPA Reimbursement Account to an eligible county:

(A) If the county has a population of less than 70,000 persons, the amount of the funds allocated from the account shall not exceed 75 percent of the costs incurred by the CUPA in implementing the unified program.

(B) If the county has a population of more than 70,000, but less than 100,000 persons, the amount of the funds allocated from the account shall not exceed 50 percent of the costs incurred by the CUPA in implementing the unified program.

(C) If the county has a population of more than 100,000, but less than 150,000 persons, the amount of the funds allocated from the account shall not exceed 35 percent of the costs incurred by the CUPA in implementing the unified program.

(2) The secretary shall not allocate more than sixty thousand dollars (\$60,000) for all CUPAs in an eligible county.

(e) This section shall become operative July 1, 2001.

SEC. 4. On or before February 15, 2001, the California Environmental Protection Agency shall submit a report to the Legislature recommending a funding source, which may include fees, to provide a stable source of funds for unified program agencies that are implementing Chapter 6.11 (commencing with Section

25404) of Division 20 of the Health and Safety Code, but have a limited number of entities regulated under the unified program.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

